



State of Tennessee Department of Children's Services

Administrative Policies and Procedures: 31.10-BA

**Subject: Consideration of Legal Risk Placement for
Children Entering Custody**

Supersedes: None

Local Policy: No

Local Procedures: No

Training Required: No

Approved by:

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Revision date:

Application

To All Department of Children's Services Employees and Contract Service Providers

Authority: TCA§§37-5-105, 37-5-106, 37-1-166, 36-1-113, 36-1-02, 37-1-102;
45 CFR§1356.21; 42 USC§671 (a) (15)

Policy

When children enter foster care due to certain types of aggravated circumstances, DCS will initially place them with families that are willing to make a commitment to adopt them if no fit and willing relatives are found, and if the children become legally free for adoption. These types of placements may occur when the:

- 1) Specific exceptions enumerated in the Adoption and Safe Families Act of 1997 (ASFA) are met, **or**
- 2) ASFA exceptions do not apply, but DCS decides that, after the assessment of the facts and review of the family situation, it is appropriate or reasonable to make no efforts to reunite the child with the parent.

After DCS has conducted a diligent search for all relative resources, DCS shall make a commitment to the child and family to not disrupt this placement unless there is a court decision that would prevent the adoption. In order to assure the availability of legal risk placements, regions must identify and develop a sufficient pool of families who are willing to accept this type of risk at the time of initial placement.

Procedures

A. Criteria for legal risk placement

The two categories in which children may be eligible for a legal risk placement are outlined in this section. These criteria will be the primary focus for the meeting required by *Section B* below.

1. Exceptions to the state agency requirement to make reasonable efforts toward reunification as established by the ASFA are as follows:
 - a) When a parent has abandoned a baby pursuant to TCA 36-1-142; **or**
 - b) If a court of competent jurisdiction has made a finding that the parent has subjected the child or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home to aggravated circumstances as defined in TCA § 36-1-102 (abandonment of an infant, aggravated assault, aggravated kidnapping, especially aggravated kidnapping, aggravated child abuse and neglect, aggravated sexual exploitation of a minor, especially aggravated sexual exploitation of a minor, aggravated rape, rape of a child, incest or severe child abuse); **or**
 - c) If a court of competent jurisdiction has made a finding that the parent has committed murder or voluntary manslaughter of any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home; **or**
 - d) If a court of competent jurisdiction has made a finding that the parent aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter of the child or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home; **or**
 - e) If a court of competent jurisdiction has made a finding that the parent has committed a felony assault that results in serious bodily injury to the child or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home; **or**
 - f) When the parental rights of the parent to a sibling or half-sibling have been terminated involuntarily.

2. No ASFA exception applies, but DCS determines that certain past circumstances or current facts related to a family or child support a decision that it is reasonable to make no effort to reunite the child with the parent. These circumstances may relate to historical involvement of the child and/or family with the child welfare system, prior court findings, or the serious nature of the child's current injuries or situation. For instance, in a severe child abuse case, an assessment of the injuries, circumstances and the family constellation may result in the determination that the only viable permanency goal is adoption. (See DCS Policy [16.31, Permanency Planning For Children/Youth in Department of Children's Services Foster Care.](#)) In cases in which these past circumstances or current facts exist, the child will be deemed appropriate for a legal risk placement only after family resources are explored and ruled out.

**B. Decision to
pursue placement
in a legal risk
home**

1. At the point of the emergency removal, the Child Protective Services case manager or supervisor will contact designated supervisors on the Foster Care and the Adoption Services teams, notifying them that there is a child in custody who may meet legal risk criteria. These staff members will confer with regional legal staff and make a decision as to the child's eligibility for a legal risk placement as outlined in *Section A* above. If the child is eligible or likely to be eligible as per the criteria above, then the staff shall strive to place the child in a legal risk home as the first placement, thereby attempting to ensure that the first placement of the child will be the permanent placement. The Adoption and Legal Risk Placement Assessment must be completed to document decisions made during any staff conference concerning legal risk placements.
2. If the team agrees that the child meets the criteria for legal risk placement, the child shall be assigned to the adoption services team for continuing case management and placement. Immediately upon assignment the case manager must register the child with REACT indicating the child is in need of a legal risk family. See *Section F* below for more information on the legal risk placement.

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- C. Searching for fit and willing relatives**
1. While pursuing a legal risk placement for the child, staff must immediately embark on a vigorous effort to identify, locate, and determine the interest of all relatives. Each region shall determine the roles of CPS and other case managers in locating all family members and determining if a placement with a fit and willing relative is possible.
 2. Staff must complete a family diagram before or at the time of the initial Child and Family Team Meeting.
 3. Staff shall attempt to contact all known families members prior to this meeting if at all possible.
- D. Documentation of search for relatives**
1. The assigned case manager and any other staff persons assigned to contact family members are responsible for documenting that all efforts have been completed to identify and communicate with relatives about the placement of the child. The team leader for the assigned case manager will certify efforts made to contact and involve each relative through entering a TN Kids case recording that includes a list of relatives identified.
 2. The assigned team coordinator will make a subsequent TN Kids case recording indicating review and approval of the efforts made to identify and communicate with relatives.
- E. Children for whom potential relative placements have been identified**
1. If a child meets the criteria in *Section A* and there is an interested, appropriate relative, the case manager will proceed immediately to set the initial child and family team meeting and then the permanency plan staffing to establish the appropriate goal(s) pursuant to DCS Policy [16.31, Permanency Planning For Children/Youth in Department of Children's Services Foster Care](#), and DCS Policy [16.41, Concurrent Planning](#).
 2. While adoption is available as an option to these families and children, relative placements are not considered legal risk placements. This exclusion is designed to allow maximum options for permanency for a child in a relative placement. Upon completion of a successful home study, relatives to children who meet the criteria in *Section A* will have first preference to adopt, but will also be given the options of permanently caring for the child through Temporary Legal Custody or PPLA.

3. If at any time during this process, including after the relative placement is made, the relative decides to withdraw as a permanent placement, the Adoption Services team will be notified to begin the identification process for an adoptive home.

**F. Placement of
Children Who
Meet Legal Risk
Criteria**

1. If no relatives are identified on the date the child is to be placed outside the home, DCS shall review all potential legal risk families who have stated a desire to adopt a child and stated a willingness to accept the legal risks associated with this placement decision.
2. In order to identify the best possible match for the child, staff shall utilize available information, however limited, and identify families that have expressed a willingness to accept a child with these characteristics. If the regional pool of legal risk families does not meet the child's needs, then a referral to REACT must be made for statewide consideration of families.
3. Families who accept a child under these circumstances must be told the following:
 - ◆ The child is not yet free for adoption but DCS intends to pursue a permanent placement outside of the parents or guardian's home.
 - ◆ DCS will complete a diligent search for all fit and willing relatives. If relatives are located, then DCS shall immediately begin activities to pursue placing the child with the relatives. The child may not move immediately depending on the time needed to fully assess family resources. See *Section F* below.
 - ◆ The DCS lawyer will immediately file a motion and seek a court order that makes the necessary finding that reasonable efforts are not required in this case. The statute requires that the court be given the opportunity to review the agency's decision not to make reasonable efforts within thirty (30) days of custody. If no relatives were located by the date of this court review and the court grants the motion, then DCS shall consider the legal risk placement to be the permanent placement for the child. See *Section J.* below.
4. If no relatives are identified and no legal risk families are available, then DCS shall proceed to match the child's characteristics with the existing pool of dually approved foster/adoptive homes in an effort to secure the best

possible placement that offers hope for a permanent placement. While this family may not have stated an initial interest in adoption, DCS shall consider this family and their evolving relationship with the child in the process of developing the individual recruitment plan for the child. If the family makes a change and decides to pursue adoption, then DCS shall maintain and support this placement when the child becomes legally free for adoption.

G. Initial child and family team meeting

1. The assigned case manager will immediately schedule the initial Child and Family Team meeting to be held within seven (7) working days of the date the child entered custody. The child and family team meeting in a legal risk situation can be used to make sure that parents understand the Department's position regarding permanency and can be engaged, to the fullest extent possible, in identifying potential relative resources and in assisting with the child's transition to another permanent living arrangement.
2. The persons attending this meeting shall include the same list of participants as those stated in DCS Policy [31.8 Initial Child and Family Team Meeting](#) with the addition of a representative of the Adoption Services Team if that team has not already been assigned.

H. Children who are determined ineligible for legal risk placement

1. If a child does not meet the above criteria for a legal risk placement, the case manager will schedule the initial child and family team meeting and the permanency plan staffing to set goals pursuant to DCS Policy [16.31, Permanency Planning For Children/Youth in Department of Children's Services Foster Care](#).
2. Concurrent goals will likely be appropriate because of the serious nature of the abuse or neglect. A referral shall be made to the Permanency Support Unit supervisor for review and involvement of the Permanency Support Unit.

I. Legal action to begin the termination of parental rights

1. If no relatives are identified or deemed appropriate for the child, the DCS lawyer will immediately file a motion and seek a court order that makes the necessary finding that reasonable efforts are not required in this case. The statute requires that the court be given the opportunity to review the agency's decision not to make reasonable efforts within thirty (30) days of custody. If the court

approves, the legal risk home will be considered the permanent home when and if the child is free for adoption.

2. At this hearing, the case manager will present the court with a permanency plan with a sole permanency goal of adoption.
3. Immediately following but no later than sixty (60) days of the goal of adoption being approved by the court, if grounds can be established, the DCS lawyer must file a termination of parental rights petition.

**J. Maintaining a
legal risk
placement**

1. Except in very unusual circumstances that are dictated by the best interests of the child or when a possible relative placement is identified, the legal risk placement will not be disrupted, even if the placement is in a contract provider home. DCS has committed to the child and the family that unless there are court decisions that prevent adoption, the family will become the adoptive parents to the child should the child becomes legally free for adoptive placement.
2. If, despite all the efforts to identify relatives of the child's commitment to state custody, a relative comes forward after this time, DCS will advise the relative of the legal risk selection process and advise the relative that any action to gain legal custody must be sought through the court system.

Forms

CS-0584	Diligent Search Checklist/Sample Diligent Search Letter
CS-0000	Adoption and Legal Risk Placement Assessment (Form number pending)

Collateral Documents

None

Standards

None

Glossary

<i>Term</i>	<i>Definition</i>
<i>Diligent Search:</i>	The duty of DCS case management employees to identify all relatives and to make vigorous efforts to contact all relatives to determine if anyone can provide a permanent placement for the child. This process begins during the CPS investigation and continues until a child has been determined to be eligible for a legal risk placement. Every possible means must be utilized to identify family within the first seven (7) days of custody.
<i>Legal Risk Child:</i>	A child who may be at legal risk of termination of parental rights and/or for whom reasonable efforts for reunification are not required or for whom no efforts to reunify are reasonable.
<i>Legal Risk Parents:</i>	Parents who can make a permanent commitment to a child for whom reasonable efforts for reunification with parents are not required and for whom there is a high likelihood of becoming legally free for adoption.
<i>Legal Risk Placement:</i>	A legal risk placement is the placement of a child (who has a sole permanency goal of adoption and for whom the goal of return to parent has been definitively eliminated as an option) with a dually approved adoptive/foster family who has committed to adopting the child when that child becomes free for adoption. Relative placements may not be considered legal risk under this policy.

This Is A Brian A. Policy and May Not Be Changed Without Prior Authorization